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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957.

No. 729

FRED THIELE AND EUGENE PANGER, CO-PARTNERS, D/B/A TWIN TOWERS COMMISSARY,

Respondents,

vs.

CITY OF CHICAGO, A MUNICIPAL CORPORATION, AND MARTIN H. KENNELLY, MAYOR OF THE CITY OF CHICAGO; TIMOTHY J. O'CONNOR, COMMISSIONER OF POLICE OF THE CITY OF CHICAGO; AND ROY T. CHRISTIANSEN, COMMISSIONER OF BUILDINGS OF THE CITY OF CHICAGO,

Petitioners.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

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Petitioners.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Come now the Petitioners, City of Chicago, a municipal corporation, and the Mayor, Police Commissioner and Commissioner of Buildings of said City of Chicago, and pray that a writ of certiorari issue to review the judgment of the Supreme Court of Illinois, entered in the above-entitled cause on September 20, 1957, rehearing denied November 19, 1957.

Citations to Opinions Below.

The judgment of the Superior Court of Cook County, Illinois is unreported, appears in the Transcript of Record at p. 3-B (Add. Abst. 14-16) and is attached hereto as Appendix A. The opinion of the Supreme Court of Illinois is reported in 12 Ill. 2d 218, appears in the Transcript of Record at pp. 6-9, and is attached hereto as Appendix B.

Jurisdiction.

The judgment of the Supreme Court of Illinois was entered September 20, 1957.

Petition for rehearing was denied November 19, 1957.

The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257 (3).

Questions Presented for Review.

1. Are the licensing and zoning ordinances of the City of Chicago unenforceable against the respondents by virtue of the provisions of Article 1, Section 8, Clause 17 of the Constitution of the United States?

2. Is the principle of sovereign immunity applicable to respondents?

3. If exclusive legislation over condemned land is vested in the Congress of the United States under Article 1, Section 8, Clause 17 of the Constitution of the United States and if Congress passes an act giving the Army the power to lease, subject to "local taxation", does a lease of such land requiring compliance with local laws permit enforcement of such local laws by municipal authorities against private parties who operate such land and improvements thereon for their own profit?

4. Is the power of "local taxation" provided for in Sec-

tion 6 of the Military Leasing Act of 1947 (10 U. S. C. Section 1270d) limited to the assessment of taxes or does it also include the power of a municipality to tax and regulate a private business having a direct relationship to the public health, safety and welfare?

5. Does Paragraph 7 of the lease which provides (Rec. 3-B; Add. Abst. 8):

> "That the Lessee shall comply with all applicable laws, ordinances, and regulations of the State, County, and municipality wherein the said demised premises are located, with regard to construction, sanitation, licenses or permits to do business, and all other matters."

inure to the benefit of a municipality, where the apartment building (in which respondents' commissary is located) is situated on the "naked land" of the Federal Government, covering only a square block (Rec. 3; Abst. 13) and entirely within the borders of the municipality?

6. Is a commissary (owned and operated by a private individual for personal profit), located in an apartment building (owned and operated by a private individual for personal profit), but erected on the "naked land" owned by the Federal Government, a "Federal enclave" not subject to a regulatory municipal ordinance, where the "naked land" is not more than a square block in size and entirely within the boundaries of the municipality, and where the residents of the municipality are at liberty to patronize the commissary?

Constitutional and Statutory Provisions.

The constitutional provisions involved are contained in Article 1, Section 8, Clause 17 of the Constitution of the United States (Appendix C); the statutory provisions involved are the Military Leasing Act of 1947, 61 Stat. 774-776, 10 U. S. C. Sections 1270, 1270d (Appendix D), the

Wherry Military Housing Act of 1949, 63 Stat. 570, 12 U. S. C. Section 1748d (Appendix E), and Sections 130-10, 130-11, 130-12, 130-13, 130-14 of the Municipal Code of Chicago (Appendix F).

Statement of the Case.

The respondents operate a food store in an apartment building in the City of Chicago. Exclusive legislative jurisdiction over the land on which the building stands has been ceded to the United States by the State of Illinois. The land was acquired by condemnation at which time a statute of Illinois (since repealed) ceded to the United States exclusive jurisdiction over land that it acquired in Illinois, reserving only the right to serve civil and criminal process (Rec. 6). After the United States secured title, the Secretary of War advised the Governor of Illinois that the United States accepted the ceded jurisdiction.

Pursuant to congressional authority, the Secretary of the Army thereafter leased the property to Herbert S. Greenwald for a term of 75 years at a rental of $100 a year. By the terms of the lease the lessee undertook to build and maintain a housing project of 253 units, the lease providing for priority of occupancy by military and civilian personnel of the Armed Forces, but in default of such occupancy the lessee was authorized to lease to other persons (Rec. 6).

The plans for the building included space for a food store and the space so provided was leased by Greenwald to the respondents. The food store is not operated for the exclusive benefit of residents of the premises, but sales are made to the general public which has access thereto (Rec. 3, Abst. 18; Rec. 6).

Under the terms of the lease to Greenwald, title to all improvements constructed upon the land by the lessee would remain in the lessee during the term of the lease, but, upon

expiration or termination of the lease, all improvements thereon would become the property of the Federal Government without compensation unless the lessee elected to remove the improvements and restore the premises to their original condition (Rec. 3-B; Add. Abst. 9, 10). The lease also provided that (Rec. 3-B; Add. Abst. 8):

> "* * * the lessee shall comply with all applicable laws, ordinances and regulations of the State, County and municipality wherein the demised premises are located, with regard to construction, sanitation, licenses or permits to do business, and all other matters."

Paragraph 13 of the Lease further provided (Rec. 3-B; Add. Abst. 10):

> "* * * the Lessee shall observe and perform all the laws, ordinances, rules and regulations relating to health and sanitation * * * and will indemnify and save harmless the Government against all actions, suits, claims and damages by whomsoever brought or made by reason of the failure to keep said buildings and improvements in good order, condition and repair, or by reason of the non-observance or non-performance of the said laws, ordinances, rules and regulations * * *."

The respondents failed to comply with the licensing and zoning ordinances of the City of Chicago and instituted this action for declaratory judgment contending that such ordinances were either inapplicable to respondents or unconstitutional as being in contravention of Article I, Section 8, Clause 17 of the United States Constitution.

The federal questions were, therefore, raised by the complaint (Rec. 3; Abst. 1-7). The trial court held that the United States had exclusive jurisdiction over respondents' food store and that the municipal ordinances of the City of Chicago were inapplicable to such premises (Rec. 3-B; Add. Abst. 14-16). The Supreme Court of Illinois affirmed the decree of the trial court (Rec. 6-9).

Reasons for Granting the Writ.

I.

The court below has decided a federal question of substance not heretofore determined by this Court.

The United States holds "naked title" to certain vacant land in the City of Chicago. This land has been leased to Greenwald, a private individual, who constructed a huge apartment building on the land. The lease provides that $100 per year be paid by Greenwald to the United States for the use of such land and that title to the apartment building remain in Greenwald for the 75 year term of the lease. Upon the expiration of the lease, Greenwald may remove the improvements from the land and retain them. If he fails to do so, the improvements become the property of the United States without compensation to Greenwald. Greenwald operates such apartment building for profit, no part of which inures to the benefit of the United States. Greenwald sub-leased a portion of the premises to the respondents, private individuals, who operate a commissary therein for profit. Respondents operate the commissary for the benefit of the general public, not restricting access thereto to occupants of the apartment building.

The court below relied upon *Collins* v. *Yosemite Park Co.* (1937), 304 U. S. 518, as being controlling. The facts in the ca. at bar are easily distinguishable from the *Collins* case.

In the *Collins* case, the United States acquired the land there concerned by Treaty in 1848. In 1850, when California became a State, the United States reserved its proprietary interest in such land. Later it was given to California, but subsequently again ceded to the United States. Today the United States exercises control over such land and operates it as a National Park. In the case at bar, the United States is not in active control of the apartment building operated

by Greenwald. In the *Collins* case, a *portion* of the land was leased to the Yosemite Park Co. which was given the right to sell alcoholic beverages to visitors. In the case at bar, *all* of the land has been leased and the United States has no joint interest in its control or operation. In the *Collins* case, the contract provided that the Yosemite Park Co. should retain profits up to a certain amount. In excess of this amount, the Park Co. was required to pay a percentage of the profits to the United States. In the case at bar, of course, the United States derives no benefit from the operation of the apartment building and is not an active "partner" sharing in the profits as in the *Collins* case. Greenwald and the respondents retain all profits, no matter how sizeable, and are solely responsible for operating and controlling the premises concerned.

In the *Collins* case, prices charged by the Yosemite Park Co. were to be approved by the Secretary of the Interior and, in determining profits for sharing with the United States, no allowance was made for the payment of local taxes. Any local taxes paid would not be considered a part of the operating expenses under the contract.

The Yosemite Park Co. brought suit to enjoin the State of California from enforcing its laws requiring a license to sell liquor and providing for regulatory measures for the liquor business. This Court held that California was powerless to regulate the activities of the Yosemite Park Co. The reasons are obvious. First of all, the United States was actively in charge of the entire Yosemite National Park and local governments could not interfere with such operation. Secondly, the United States was a "partner" in a profit-making enterprise in connection with the portion of the park leased to the Yosemite Park Co. Enforcement of local laws would permit regulation of a business operated within an area controlled by the United States Government and from which it received profits.

In the case at bar, the United States leased *all* of its land; it derives no pecuniary benefit from the operation of the land and the improvements thereon; it holds "naked title" as "owner", but Greenwald holds title to the building and may remove it at the termination of the lease. We perceive no analogy between the *Collins* case and the case at bar. We believe the court below was grievously in error in ruling that the *Collins* case was controlling.

In leasing its land to Greenwald, the United States specifically provided that he would comply with all laws of the City of Chicago with regard to construction, sanitation, licenses or permits to do business, and all other matters. What possible justification can the respondents have for failing to so comply? The fees chargeable by the City of Chicago for a Food Purveyors' license are nominal, almost negligible. But, before the license will issue, the Chicago Board of Health must inspect such premises and examine the employees engaged in employment there. Why are the respondents averse to such inspection and examination? The mere fact that they are averse makes them suspect. Petitioner is concerned with residents of the City of Chicago who may avail themselves of respondents' commissary, as well as with military and civilian personnel living in the building.

We know of no food purveyor anywhere who may operate without health inspections, preliminary to the issuance of a license. Under the opinion of the Illinois Supreme Court, the respondents in the case at bar are at liberty to maintain their premises in any condition they please. They may hire employees in any condition of health. Who is there to enforce normal safeguards over a business selling food to the general public? It is unconscionable, and inconceivable; that respondents may be permitted to continue this operation. Are refrigeration facilities adequate? Is contaminated food being sold? Are persons suffering from

contagious diseases employed there? No one knows. Respondents hide behind sovereign immunity in the assumption that the Federal Government is disinterested in such matters. We do not believe so. The rigid health regulations enforced by the military services for their own personnel is the answer to the Government's viewpoint in this regard. But neither the military, nor the United States, has any control over Greenwald's premises. The building is his and the lease so states. The respondents are in a similar position. The respondents are answerable to no one, not even to the government of the United States. The precise reason for the provision in the lease requiring respondents to comply with local laws was because the United States thereby relieved itself of supervisory inspections and regulatory duties in an area where it had no active control.

The very purpose of paragraph 13 of the Lease requiring the respondents to observe and perform all ordinances relating to health and sanitation and to indemnify the Government against all actions by whomsoever brought by reason of non-performance of said ordinances, was to compel enforcement by local authorities. Respondents *must* save the Government harmless from this action as well as any other. They cannot avoid it by cloaking themselves in so-called "sovereign immunity," because their lease with the Sovereign insisted upon observance of local ordinances.

Article 1, Section 8, Clause 17 of the Constitution vests exclusive legislation in the Congress of the United States over all land purchased *for the erection of needful buildings*. In the case at bar, it is not apparent that the land in question was purchased "for the erection of needful buildings." However, all of such land was leased by the United States to private individuals for a negligible rental. The building erected upon such land is the sole property of

such private individuals and operated by them for profit. The respondents are further removed from the United States in that they are sub-lessees of a part of the premises concerned and their operation is completely removed from control or supervision by the United States or the military. They are engaged in a business enterprise at prices established by them. They deal with citizens of the City of Chicago who have access to respondents' commissary as well as with occupants of the building. If the positive provisions of the lease requiring compliance with local laws may be flouted by the respondents, then the lease itself has been violated and respondents have no legal or equitable standing in court.

II.

The court below has decided a federal question not in accord with the applicable decisions of this Court.

This Court, and many state courts, have consistently sustained the right of local authorities to enforce municipal ordinances and state statutes against private parties in possession of businesses or buildings within federal areas. The case at bar is strengthened and distinguishable from most (if not all) such cases by the fact that the lease under which respondents operate specifically provides that they shall comply with local laws.

In *Offutt Housing Co.* v. *Sarpy County* (1956), 351 U. S. 253, this Court was confronted with a lease practically identical with the one involved in the case at bar, except that in the case at bar the lease additionally provided that compliance with local laws was necessary. In the *Offutt* case, this Court sustained the enforcement of local taxation against the lessee there involved.

In *People* v. *Vendome Service, Inc.*, 12 N. Y. S. 2d 183 (Affirmed, 19 N. Y. S. 2d 195), land was purchased for the

construction of a post-office. Prior to construction, the United States leased a portion of the premises to private individuals. Although New York had consented to the purchase, the United States had not as yet applied for exclusive jurisdiction. In finding the defendant guilty of failure to obtain a permit, the court said (p. 187):

> "* * * where, * * * the government leases the property to a private person to carry on a non-governmental function, such property is subject to the legislative authority and control of the State * * *."

In numerous other instances this Court and the various State courts have made similar rulings (*Palmer* v. *Barrett*, 162 U. S. 399; *Carnegie-Illinois Steel Corp.* v. *Alderson*, 127 W. Va. 807, 34 S. E. 2d 737 (Certiorari denied, 326 U. S. 764); *Chicago, R. I. & Pacific Railway Co.* v. *McGlinn*, 114 U. S. 542; *Herkens* v. *Glynn*, 101 P. 2d (Kans.) 946; *Fort Dix Apartments Corp.* v. *Borough of Wrightstown*, 225 Fed. 2d 473 (Certiorari denied, 351 U. S. 962); *Conley Housing Corp.* v. *Coleman*, 89 S. E. 2d (Ga.) 482; *Meade Heights Inc.* v. *State Tax Commission*, 95 A. 2d (Md.) 280; *Howard* v. *Commissioners*, 344 U. S. 624; *Penn Dairies, Inc.* v. *Milk Control Commission of Pennsylvania*, 318 U. S. 261; *James Stewart & Co.* v. *Sadrakula*, 309 U. S. 94; *Alabama* v. *King & Boozer*, 314 U. S. 1; *Graves* v. *N. Y. ex rel. O'Keefe*, 306 U. S. 466; *Mayor and City Council of Baltimore* v. *Linthicum*, 183 A. (Md.) 531; *S. R. A., Inc.* v. *Minnesota*, 327 U. S. 558; *Murray* v. *Joe Gerrick & Co.*, 291 U. S. 315; *American Motors Corp.* v. *City of Kenosha*, 80 N. W. 2d (Wisc.) 363.)

Conclusion.

This is a case of first impression relative to the following issues:

1. Whether the provisions of Section 6 of the Military Leasing Act of 1947 as to "local taxation" are exclusive of

regulatory features which are inseparable from licensing ordinances.

2. Whether the express provisions of the lease involved requiring compliance with local laws are unenforceable by municipal authorities.

3. Whether the inherent right of governmental bodies to enforce measures for the protection of the health, safety and welfare of the community is inapplicable to respondents' commissary merely because the "naked land" upon which it is located is the property of the United States Government.

4. Whether the doctrine of "governmental immunity" can be asserted by a private individual who owns and operates for personal profit a commissary located in an apartment building (owned and operated by a private individual for personal profit) but erected on the "naked land" owned by the Federal Government and leased under the provisions of the Military Leasing Act of 1947.

Important public interest, national and local, requires that this matter should be heard, considered and decided on the merits by this Court.

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

Judgment Order of the Superior Court of Cook County, Illinois.

DECLARATORY JUDGMENT.

This matter coming on to be heard on the plaintiffs' Motion for Summary Judgment, the court having considered the affidavits filed in support of said Motion, the affidavits filed by defendants in opposition to said Motion, the pleadings and the Briefs filed by the parties, and the Court having heard argument of counsel and now being fully advised in the premises,

The Court hereby finds that:

1. This Court has jurisdiction of the parties and of the subject matter hereof.

2. This is an action for declaratory judgment in a case of actual controversy instituted pursuant to the statutes of the State of Illinois in such case made and provided.

3. The plaintiffs are residents of the City of Chicago and engaged in business therein under the name and style of "Twin Towers Commissary" and operate a commissary, or food shop, in the building known as Twin Towers located in the City of Chicago in the block bordered by Fiftieth Street on the north, Leif Erickson Drive on the east, Fifty-first Street on the south, and East End Avenue on the west.

4. Title to the land on which the said Twin Towers building is located and on which the plaintiffs operate their aforesaid commissary is vested in the United States of America, said land having been ceded to the United States

of America by the State of Illinois pursuant to the laws of the United States and the State of Illinois.

5. The United States of America has sole and exclusive jurisdiction over the land on which the Twin Towers and the said commissary of the plaintiffs are located, except for the rights to service of process and making arrests, which rights were specifically reserved by the State of Illinois at the time of the said cession.

6. The municipal ordinances of the City of Chicago have no application or effect within the confines of the aforesaid land on which the plaintiffs operate their commissary and neither the City of Chicago nor any of its agencies, officers, agents or employees have any power, right or jurisdiction to enforce or seek to enforce the said ordinances against the plaintiffs, their agents or employees, in the operation of their said business on the said land.

7. The plaintiffs have substantially sustained and proven the allegations contained in their Complaint for Declaratory Judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that:

(a) The licensing and zoning ordinances of the City of Chicago are not applicable to the operation of the said Twin Towers Commissary,

(b) The plaintiffs, Fred Thiele and Eugene Panger, and either of them, and their agents and employees, may operate and conduct their aforesaid business known as the "Twin Towers Commissary" without regard to the licensing and zoning ordinances of the City of Chicago, and

(c) Neither the City of Chicago nor any of its agencies, officers, agents or employees have the right, power or jurisdiction to enforce or seek to enforce the said building and zoning ordinances of the City of Chicago against the plaintiffs, or either of them, their agents or employees, in the operation of their aforesaid business.

APPENDIX B.

OPINION OF THE SUPREME COURT OF ILLINOIS.

Mr. JUSTICE SCHAEFER delivered the opinion of the court:

The plaintiffs operate a food store in an apartment building in the Hyde Park area on the south side of Chicago. Exclusive legislative jurisdiction over the land on which the building stands has been ceded to the United States by the State of Illinois, and the question is whether under the Federal constitution the licensing and zoning ordinances of the city apply to the plaintiffs' activities.

The land in question was acquired by the United States by condemnation. At that time a statute of Illinois, since repealed, ceded to the United States exclusive jurisdiction over land that it acquired within Illinois, reserving only the right to serve civil and criminal process. (Ill. Rev. Stat. 1943, chap. 143, pars. 23-25; see Laws of 1953, p. 1073.) After the United States secured title, the Secretary of War advised the Governor of Illinois that the United States accepted the ceded jurisdiction.

Pursuant to congressional authority, the Secretary of the Army thereafter leased the property to Herbert S. Greenwald for a term of 75 years at a rental of $100 a year. By the terms of the lease the lessee undertook to build and maintain a housing project of 253 units in accordance with plans approved by Federal authorities. The lease provides for priority of occupancy by military and civilian personnel of the Army, Navy, Marine Corps, or Air Force, but in default of such occupancy the lessee is authorized to lease to other persons.

The plans for the building included space for a food store. The space so provided was leased by Greenwald to the plaintiffs. After the plaintiffs had been arrested for operating the food store without the license required by the city's ordinance, this action was instituted for an injunction restraining the officials of the city from enforcing its licensing, building and zoning ordinances against the plaintiffs in the operation of their food store. A decree for the plaintiffs was entered upon their motion for a summary judgment, and the city appeals.

The constitution of the United States gives the Congress power "To exercise exclusive Legislation • • • over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts • • • and other needful Buildings." (Art. 1, sec. 8, clause 17.) The parties agree that exclusive jurisdiction under this provision was vested in the United States when the Secretary of War notified the Governor of Illinois that jurisdiction was accepted. 40 U. S. C. 255.

Areas so situated are known as Federal enclaves, or, more picturesquely, as "Federal islands" within the States. They present many problems. Persons who reside in such an area, although they live within the borders of a State, are not regarded as its residents. Absent special legislation or intergovernmental agreement, they may not vote, hold public office or serve on juries, and their children are not entitled to attend public schools. (U. S. Interdepartmental Committee For the Study of Jurisdiction over Federal Areas within the States, Report pt. 1, U. S. Govt. Printing Office, 1956; 101 U. of Pa. L. R. 124.) The Federal Assimilative Crimes Act (18 U. S. C. 13) has made State criminal law applicable within the enclaves, but enforcement of that law is a Federal and not a State responsibility. (See, *e.g.*, *United States* v. *Unzeuta*, 281 U. S. 138; *Benson* v. *United States*, 146 U. S. 325.) By Federal statute State

income, sales and use taxes have been made applicable within Federal enclaves. (4 U. S. C. 104-110.) There have been other similar accommodations. But State and local fire and police protection, garbage removal and other services are not available within Federal enclaves except by agreement, and even if there is agreement serious questions remain as to the status of State or municipal officers while performing these services.

The dominant fact in this case is that exclusive jurisdiction over the area in question has been ceded by Illinois to the United States. The city argues, however, that jurisdiction has been retroceded by the lease between the Secretary of the Army and Greenwald, and that the present plaintiffs are bound by the provisions of that lease. We agree that the plaintiffs, as sublessees, are bound by the provisions of the lease between the government and Greenwald. But we are unable to agree that the lease is effective to relinquish Federal jurisdiction. The clause relied upon is paragraph 7: "That the lessee shall comply with all applicable laws, ordinances and regulations of the State, County and municipality wherein the said demised premises are located, with regard to construction, sanitation, licenses or permits to do business, and all other matters."

There are several reasons why this provision of the lease does not vitalize the city's ordinances. The lease is a contract to which the city is not a party, and enforcement of its provisions is a matter between lessor and lessee. Even if the city might be regarded as a third party beneficiary, that status could hardly authorize it to invoke penal sanctions for the violation of its ordinances. Moreover, we are not aware that Congress has authorized the Secretary of War to retrocede any portion of the exclusive jurisdiction of the United States, and either action or authorization by Congress is essential to retrocession so long as the United States retains the land. Finally, it has been held that similar provisions

in Federal contracts do not make local ordinances effective in areas over which the Federal government has exclusive jurisdiction. *State* v. *Blair,* 238 Ala. 377, 191 So. 237; *City of Birmingham* v. *Thompson,* 200 F. 2d (5) 505.

The city correctly points out that the present lease is similar to that involved in *Offutt Housing Co.* v. *County of Sarpy,* 351 U. S. 253, and that both leases were made under the authority of the same Federal statutes. It was there held that the lessee's interest in a military housing project located in a Federal enclave was subject to local taxation. That decision was not based, however, upon the terms of the lease, but rather upon the ground that Congress had consented to State and local taxation. The court expressly stated that it was not holding that Congress had relinquished its exclusive jurisdiction over these areas. "We hold only that Congress, in the exercise of this power, has permitted such state taxation as is involved in the present case." 351 U. S. at 260-1.

The city also strongly emphasizes that under the lease the title to the building is in Greenwald and that both Greenwald and the plaintiffs, his sublessees, are private individuals engaged in business for private profit. The affidavit of a city investigator, submitted in opposition to the plaintiffs' motion for summary judgment, is to the effect that plaintiffs do not restrict their sales to military personnel or civilian employees of the Federal government, but sell promiscuously to anyone who is willing to buy. These considerations may raise doubts as to the wisdom of the cession and acceptance of exclusive jurisdiction, but for our purposes they are irrelevant. Private operations within an area over which the United States has exclusive jurisdiction do not become subject to State or local regulation because they are private. *Collins* v. *Yosemite Park & Curry Co.,* 304 U. S. 518; *Pacific Coast Dairy, Inc.* v. *Dept. of Agriculture of California,* 318 U. S. 285;

cf., Penn Dairies, Inc. v. *Milk Control Com. of Pennsylvania,* 318 U. S. 261.

The city's remaining contention rests upon a principle of international law. When jurisdiction over territory is transferred from one sovereign to another, the laws of the old sovereign governing private rights, so far as they are not incompatible with those of the new, remain in effect until they are altered or repealed by the new sovereign. This principle has been applied to the relations between State and nation with respect to Federal enclaves. *Chicago, Rock Island and Pacific Railway Co.* v. *McGlinn,* 114 U. S. 542; *Arlington Hotel Co.* v. *Fant,* 278 U. S. 439; *James Stewart & Co.* v. *Sadrakula,* 309 U. S. 94.

The cases relied upon, however, show the limitations of the doctrine. They concerned disputes between private parties, and those disputes were held to be governed by the State law as it existed before the United States acquired jurisdiction. None of them involved a direct assertion of governmental power by the superseded government, as does this case. More closely in point is *Collins* v. *Yosemite Park & Curry Co.,* 304 U. S. 518. There California had ceded exclusive jurisdiction to the United States, reserving only the right to tax. California's Alcohol Beverage Control Act contained regulatory provisions, and also imposed excise and license taxes. The excise taxes were sustained as to the company, which operated hotels, camps and stores in the park under contract with the Secretary of the Interior. But California's regulatory and licensing provisions were held to be unenforceable. The court said: "As there is no reservation of the right to control the sale or use of alcoholic beverages, such regulatory provisions as are found in the Act under consideration are unenforceable in the Park." 304 U. S. at 530.

The decree of the superior court of Cook County was correct and it is affirmed.

Decree affirmed.

APPENDIX C.

Constitution of the United States, Article 1, Section 8, Clause 17.

> **The Congress shall have Power * * * to exercise exclusive Legislation * * * over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of * * * needful buildings;**

APPENDIX D.

Military Leasing Act of 1947, 61 Stat. 774-776, 10 U. S. C. Sections 1270, 1270d:

§ 1270. Lease of real or personal property; period of lease; terms and conditions; revocation; disposition of receipts; report to Congress

Whenever the Secretary of the Army shall deem it to be advantageous to the Government he is authorized to lease such real or personal property under the control of his Department as is not surplus to the needs of the Department within the meaning of the Act of October 3, 1944 (58 Stat. 765), and is not for the time required for public use, to such lessee or lessees and upon such terms and conditions as in his judgment will promote the national defense or will be in the public interest. Each such lease shall be for a period not exceeding five years unless the Secretary shall determine that a longer period will promote the national defense or will be in the public interest. The Secretary may include, among other terms and conditions in the lease, a right of first refusal in the lessee to purchase the property in the event of the revocation of the lease in order to permit sale thereof by the Government, but this section shall not be construed as authorizing the sale of any property unless the sale thereof is otherwise authorized by law. Each such lease shall contain a provision permitting the Secretary to revoke the lease at any time, unless the Secretary shall determine that the omission of such provision from the lease will promote the national defense or will be in the public interest. In any event each such lease shall be revocable by the Secretary during a national emergency declared by the President. Notwithstanding section 303b of Title 50, or any other provision of law, any such lease may provide for the maintenance, protec-

tion, repair, or restoration by the lessee, of the property leased or of the entire unit or installation where a substantial part thereof is leased, as a part or all of the consideration for the lease of such property. In the event utilities or services shall be furnished by the Department to the lessee in connection with any lease, payments for utilities or services so furnished may be covered into the Treasury to the credit of the appropriation or appropriations from which the costs of furnishing any such utilities or services to the lessee was paid. Except as otherwise hereinabove provided, any money rentals received by the Government directly under any such lease shall be deposited and covered into the Treasury as miscellaneous receipts. The authority herein granted shall not apply to oil, mineral, or phosphate lands. July 26, 1947, c. 343, Title II, § 205(a), 61 Stat. 501; Aug. 5, 1947, c. 493, § 1, 61 Stat. 774; Sept. 28, 1951, c. 434, Title VI, § 605, 65 Stat. 366.

Repealed by Act Aug. 10, 1956, c. 1041, § 53, 70A Stat. 641. See § 2667 of Title 10, Armed Forces.

§ 1270d. Same; State or local taxation; renegotiation of leases

The lessee's interest, made or created pursuant to the provisions of sections 1270-1270b, 1270d of this title, shall be made subject to State or local taxation. Any lease of property authorized under the provisions of said sections shall contain a provision that if and to the extent that such property is made taxable by State and local governments by Act of Congress, in such event the terms of such lease shall be renegotiated. Aug. 5, 1947, c. 493, § 6, 61 Stat. 775.

Repealed by Act Aug. 10, 1956, c. 1041, § 53, 70A Stat. 641. See § 2667 of Title 10, Armed Forces.

APPENDIX E.

Wherry Military Housing Act of 1949, 63 Stat. 570, 12 U. S. C. Section 1748d:

§ 1748d. Lease of property; terms and conditions

Whenever the Secretary of the Army, Navy, or Air Force determines that it is necessary to lease any land held by the United States on or near a military installation to effectuate the purposes of this subchapter, he may lease such land upon such terms and conditions as will, in his opinion, best serve the national interest. The authority conferred by this section shall be in addition to and not in derogation of any other power or authority of the Secretary of the Army, Navy, or Air Force. June 27, 1934, c. 847, Title VIII, § 805, as added Aug. 8, 1949, c. 403, § 1, 63 Stat. 570, and amended Aug. 11, 1955, c. 783, Title IV, § 401, 69 Stat. 651.

APPENDIX F.

Municipal Code of Chicago, Sections 130-10 to 130-14:

Food Purveyors (Retail).

130-10. The term "food purveyor" is hereby defined as any person operating a retail food establishment that keeps for sale, sells, or offers for sale, at retail, or is in the business of delivering to consumers, any cooked or uncooked meats, agricultural products, drinks, confections, condiments, or any other materials or articles used as food for human consumption, except live poultry or other live fowl, where the same are not served for consumption on the premises. [Amend. Coun. J. 12-1-50, p. 7251.]

130-11. It shall be unlawful for any person to engage in the business of food purveyor without first having obtained a license so to do.

130-12. An application for a food purveyor's license shall be made in conformity with the general requirements of this code relating to applications for licenses. Such application shall contain such further information as may be required by the board of health in order to inform it fully as to the size and nature of the place to be used for the purposes of the business and the conditions, equipment, and facilities for conducting the business therein, the health of persons to be employed and the regulations and facilities provided for them.

Before any license shall issue, the board of health shall cause an inspection to be made of the premises to be occupied by the applicant as a food purveyor, the equipment contained therein, the employes intended for the same, and all other matters relating to the business which it considers necessary to investigate from a health or sanitary standpoint.

130-13. Food purveyors are hereby divided into classes, and the annual license fee for each class is as follows:

Class I. This class shall include establishments which handle food and food products but do not sell fresh or frozen fruit or vegetables, or raw, fresh, frozen, smoked, salted, pickled, or cooked meats, fish, poultry, or game, or any products or preparations thereof which are not contained and sold in air-tight cans, bottles, or similar containers. The license fee for this class, if not more than three persons are engaged in such establishment, shall be six dollars.

Class II. This class shall include establishments which handle raw, fresh or frozen meats, fish, poultry, or game, but shall not include the sale or slaughter of live poultry or other live fowl. It shall include meat markets, poulterers, fish mongers, and all establishments operating on a "self-help" basis where the buyer helps himself to his purchases. It shall also include all food purveyors' establishments not falling under classes I or III. The annual license fee for this class, if not more than three persons are engaged in such establishment, shall be twenty-five dollars.

Class III. This class shall include establishments which handle fresh or frozen fruit or vegetables, or smoked, salted, pickled, or cooked meats, fish, poultry, or game, but do not sell any raw, fresh or frozen meats, fish, poultry, or game. The annual license fee for this class, if not more than three persons are engaged in such establishment, shall be twelve dollars.

Provided, however, that any additional persons engaged in any of the aforesaid classes of establishments shall be paid for at the rate of four dollars each, such sums to be added to the license fees aforesaid, and provided further, that where a food purveyor conducts or operates more than one of the three classes established hereunder he shall be required to procure but one license and such license shall be of the class that requires the payment of the highest license fee under this section.

The number of persons engaged shall be the number engaged in selling to the trade or in the making or manufacture of products sold in such establishments.

A single or "combination" license may be issued to an applicant to permit him to conduct or operate the business of food purveyor and to sell milk and milk products at retail, not for consumption on the premises, in connection with such business of food purveyor on the same premises. This provision shall not apply fo licenses for milk plants or milk receiving station. The fee to be paid for single or "combination" license shall equal the sum of the fees which the applicant would be required to pay if separate licenses for each business were issued to him. [Amend. Coun. J. 4-2-41, p. 4556; 11-6-47, p. 1172; 12-1-50, p. 7251.]

130-14. All purveyors selling commercial cuts of meats, or perishable meat food products, shall be equipped with at least one refrigerator or cooling room, of adequate size and capacity, so as to permit at all times the free circulation of air therein, and so as to maintain a temperature of forty-two degrees Fahrenheit, or lower.